

1 BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

2 STATE OF MONTANA

3 * * * * *

4 PATRICIA HEDGES, PARENT OF)
5 CHRISTINA, CHRISTOPHER AND)
6 JUSTIN HEDGES, MINOR CHILDREN,)

7 Petitioner/Appellant,)

8 VS.)

9 TRUSTEES, SWAN LAKE AND SALMON)
10 PRAIRIE SCHOOL DISTRICT NO. 73.)
11 LAKE COUNTY,)

12 Respondents.)

OSPI 217-92

DECISION AND ORDER

13 * * * * *

14 **PROCEDURAL HISTORY OF THIS APPEAL**

15 Patricia Hedges is the parent of three elementary students
16 who live in Swan Lake/Salmon Prairie School District No. 73, Lake
17 County. She is appealing an October 21, 1992, decision of the
18 Missoula County Superintendent of Schools, Rachel Vielleux,
19 acting for the Lake County Superintendent of Schools.
20 superintendent Vielleux upheld District No. 73 Trustees' decision
21 not to approve a tuition agreement with Bigfork Elementary.

22 In prior years, the Hedges children attended Bigfork
23 Elementary School in Flathead County. The Swan Lake School was
24 closed so tuition for the Hedges children was paid by District
25

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1 \lo. 73 as required by § 20-5-301, MCA, (1991)¹. In September,
2 1992, District No. 73 reopened Swan Lake Elementary, which is
3 approximately one-half mile from the Hedges' home. When Swan
4 Lake Elementary reopened, Ms. Hedges chose to have her children
5 attend out-of-district at Bigfork Elementary, which has not
6 waived the tuition for students attending from District No. 73.

7 Ms. Hedges wanted District No. 73 to pay her children's
8 tuition to Bigfork Elementary. On June 24, 1992, she submitted
9 in application for an elementary tuition agreement with Bigfork
10 Elementary to the Swan Lake Trustees. On July 7, 1992, the Swan
11 Lake Trustees discussed the request, reviewed Board policy and
12 decided not to enter into a tuition agreement with Bigfork. Ms.
13 Hedges appealed to the County Superintendent of Schools and
14 disqualified the Lake County Superintendent.

15 The Missoula County Superintendent heard the matter on
16 October 8, 1992. she issued an order upholding the Swan Lake
17 Trustees on October 21, 1992. Ms. Hedges appealed to the State
18 Superintendent and the County Superintendent's record below was
19 transmitted to this office on December 11, 1992.

20 Neither Ms. Hedges nor the District filed a brief with this
21 office. Ms. Hedges sent a letter asking that "under
22 discretionary approval OPI would grant my request for District 73

23 ¹ This statute was repealed by the 1993 Legislature. Sec.
24 19, Ch. 563, L. 1993. This case is resolved under the old law,
25 however, the new statute on mandatory approval (§ 20-5-321, MCA,
1993) would reach the same result.

1 to pay my children's tuition to attend District 38."

2 **STANDARD OF REVIEW**

3 This Office applies the standard of review of administrative
4 decisions established by the Montana Legislature in § 2-4-704,
5 MCA, and adopted by this Superintendent in 10.6.125, **ARM**.
6 Findings of fact are reviewed under a clearly erroneous standard
7 and conclusions of law are reviewed under an abuse of discretion
8 standard. Harris v. Trustees, Cascade County and Nancy Keenan,
9 241 Mont. 272, 731 P.2d 1318 (1990). The petitioner bears the
10 burden of showing that he has been prejudiced by a clearly
11 erroneous ruling. Terry v. Board of Regents, 220 Mont. 214, at
12 217, 714 P.2d 151, at 153 (1986).

13 Findings are upheld if supported by substantial, credible
14 evidence in the record. A finding is clearly erroneous only if
15 a "review of the record leaves the Court with the definite and
16 firm conviction that a mistake has been committed." Wage Appeal
17 v. Board of Personnel Appeals, 208 Mont. 33, at 40, 676 P.2d 194,
18 at 198 (1984). "[N]either the District Court nor the
19 Superintendent of Public Instruction may substitute [her]
20 judgment for that of the County Superintendent as to the weight
21 of the evidence on questions of fact. Frazer School District No.
22 2 v. Beth Flynn, et al., 732 P.2d 409 (Mont. 1987).

23 Conclusions of law are subject to more stringent review.
24 Conclusions of law are reviewed to determine if the agency's
25 interpretation of the law is correct. Steer, Inc. v. Dept. of
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1 Revenue, 245 Mont. 470, at 474, 803 P.2d at 603 (1990).

2 **DECISION AND ORDER**

3 The Missoula County Superintendent correctly concluded that
4 the Hedges children do not meet the criteria for mandatory
5 tuition approval listed in § 20-5-301, MCA (1991), therefore,
6 District No. 73 Trustees were not required to enter into a
7 tuition agreement with Bigfork Elementary. She also correctly
8 concluded that the Trustees did not abuse their discretion by
9 refusing to approve a tuition agreement.

10 A review of the transcript of the October 8, 1992, hearing,
11 the exhibits, and the agreed facts show that Ms. Hedges did not
12 offer evidence establishing that tuition approval was mandatory
13 in this case or that the Trustees abused their discretion, such
14 as arbitrarily approving tuition for some students but not for
15 others. The record as a whole supports the findings and as a
16 matter of law the decision is correct. The order is AFFIRMED.

17 **DISCUSSION**

18 It is unclear whether Ms. Hedges is arguing that District
19 No. 73 Trustees had to approve her tuition application because
20 she met the mandatory criteria for approval or that they abused
21 their discretion. This order will discuss both theories.

22 Mandatory approval. The Legislature had established the
23 criteria for mandatory approval of elementary tuition under § 20-
24 5-301, MCA (1991). The County Superintendent found, based on the
25 evidence presented, that Ms. Hedges' situation did not meet any
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1 of these criteria. At the time of this proceeding the relevant
2 portion of the mandatory tuition statute stated:

3 **20-5-301. Elementary tuition with mandatory approval.**

4

(3) In considering the approval of a tuition application, the tuition approval agents prescribed in this section shall approve such application for a resident child when:

6 (a) the child resides less than 3 miles from the school which he wishes to attend and more than 3 miles from any school of his resident elementary district;

8 (b) the child resides more than 3 miles from any school of his resident elementary district and such district does not provide transportation under the provisions of this title;

10 (c) the child resides more than 3 miles from any school of his resident elementary district, the resident district does not provide transportation under the provisions of this title, and school bus transportation is furnished by the district operating the school which he wishes to attend;

12 (d) the child is a member of a family who must send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided the child resides more than 3 miles from an elementary school of the resident district or the parent must move to the elementary district where the high school is located in order to enroll the other child in high school;

14 The Hedges home is approximately one-half mile from their
16 resident elementary school (FOF No. 13, Transcript page 28).
18 Given this fact, none of the mandatory criteria applies. The
20 County Superintendent correctly upheld the Trustees.

22 Discretionary approval. Ms. Hedges also argued that the
24 Trustees abused their discretion by not approving the agreement
26 pursuant to § 20-5-302, MCA. The County Superintendent concluded
that the Trustees did not abuse their discretion. At the time of

1 this proceeding the discretionary tuition approval statute
2 stated:

3 **20-5-302. Elementary tuition with discretionary approval.**
4 In considering the approval of a tuition application that is not
5 required to be approved under the provisions of 20-5-301, the
6 tuition approval agents prescribed in 20-5-301 may approve such
7 application when such approval agents, individually, determine
8 that the tuition agreement should be approved because of:

9 (1) the distance and road conditions between the child's
10 residence and any school of his resident district;
11 (2) the trading center of the child's parents;
12 (3) an opportunity to live with his relatives;
13 (4) dormitory facilities in the district to be attended;
14 (5) the living conditions of the child's family;
15 (6) the availability of transportation; or
16 (7) the type of educational program available in the school
17 to be attended. (Emphasis added)

18 This statute is permissive; it does not compel elected
19 trustees to do anything. It allows them to exercise their
20 discretion to approve out-of-district tuition if they determine
21 any of the conditions listed in subsections 1 through 7 exist.
22 Even if those conditions exist, nothing in this statute compels
23 trustees to pay out-of-district tuition.

24 To establish an abuse of discretion, Ms. Hedges would have
25 to show that the District No. 73 Trustees exercised their
discretion in an arbitrary or capricious manner. For example,
one could establish abuse of discretion by showing that trustees
arbitrarily approved some tuition agreements based on a parent's
trading center and denied other, similar requests. There is no
evidence of this type in the record.

The Chairman of the Board of Trustees testified that, upon
determining that the mandatory tuition statute did not apply, the

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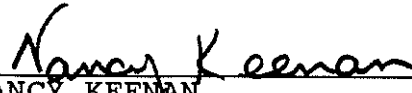
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1 Trustees considered discretionary approval at a public meeting
2 after notice to Ms. Hedges (Transcript page 20). They decided
3 this situation did not justify discretionary tuition approval.
4 Ms. Hedges presented evidence on why she believes tuition should
5 have been approved under the discretionary statute. In other
6 words, why, if she were a Trustee, she would approve the
7 agreement. This type of evidence does not establish abuse of
8 discretion.

9 To overturn a discretionary act on appeal, a petitioner must
10 establish that trustees abused their discretion. Establishing
11 that trustees exercised their discretion contrary to the wishes
12 of the petitioner is not enough to set aside a decision because
13 neither the County Superintendent nor this Superintendent's role
14 on review is to second-guess the Trustees' decision or reconsider
15 the facts that went to making the decision. This Superintendent
16 reviews the decision-making process.

17 There is no error in the process in this case. The record
18 shows that Ms. Hedges testified to the reasons she believes
19 conditions exist that justify discretionary approval, that the
20 Trustees considered her reasons, and that they were not persuaded
21 they should exercise their discretion to approve out-of-district
22 tuition. The County Superintendent correctly upheld the
23 Trustees' decision.

1 DATED this 12 day of October, 1993.

2
3 
4 NANCY KEENAN

5 CERTIFICATE OF SERVICE

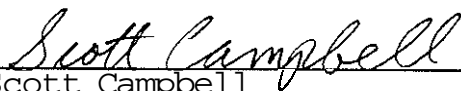
6 THIS IS TO CERTIFY that on this 12th day of October, 1993,
7 a true and exact copy of the foregoing Decision and Order was
8 mailed, postage prepaid, to the following:

9 Patricia Hedges
10 c/o P.O. Box 114
11 Swan Lake, MT 59911

Joyce Decker-Wegner
Lake County Superintendent
106 4th Ave. E.
Polson, MT 59860

12 Madeline Black, Chairperson
13 Swan Lake School District
14 Box 86
15 Swan Lake, MT 59911

Rachel Vielleux
County Superintendent
Missoula County
301 W. Alder
Missoula, MT 59802

16 
17 Scott Campbell
18 Paralegal-Assistant
19 Office of Public Instruction
20
21
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